



# WPHA

Western Plant Health Association

**VIA FIRST-CLASS MAIL**

May 18, 2007

Dr. Karl E. Longley, Chairperson  
Central Valley Regional Water Board  
11020 Sun Center Dr. #200  
Rancho Cordova, CA 95670

**RE: Water Quality Criteria Plan**

Dear Chairperson Longley:

On behalf of the Western Plant Health Association (WPHA), I would like to call to your attention to the initiative from the Central Valley Regional Water Quality Control Board (Regional Board) to develop a new methodology for establishing water quality criteria specifically for pesticides. This has much broader implications than would appear at first blush.

The technical documents<sup>1</sup> developed pursuant to this initiative are currently open for public comment. I have attached our detailed technical comments, addressing the detail of the proposal, as the Regional Board has requested. However, WPHA has some much more fundamental questions regarding the intent and appropriateness of the Regional Board initiative and its implications for the overall regulatory structure under which agriculture in the State of California is conducted, and even for the relationships between the federal Clean Water Act and the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) from which much of the California agency authorities derive.

WPHA represents crop protection and fertilizer manufacturers, distributors, biotechnology providers and agricultural retailers in California, Arizona, and Hawaii, including companies marketing 90% of crop protection products used within these states. We are intimately aware of the challenges faced by production agriculture in protecting water quality in State, as well as growing concerns regarding water quality impacts of non-agricultural use of pesticides. The overlay of regulatory authorities with which these users must contend is already formidable. We are concerned that that this new methodology and its anticipated use has the potential to effectively insert this Regional Board into the establishment of pesticide use criteria and restrictions in a manner that effectively bypasses and potentially duplicates the existing registration, labeling and federal water quality regulatory structure for these products.

That existing structure carefully integrates the primary registration/restriction/labeling role of the Department of Pesticide Regulation (DPR) with roles and enabling methodologies of USEPA and the California Department of Fish & Game. The stated goal of the Regional Board project is to “develop a methodology for derivation of pesticide water quality criteria for the protection of

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<sup>1</sup> December 2006 University of California-Davis Report: “Methodology for Derivation of Pesticide Water Quality Criteria (WQC) for the Protection of Aquatic Life in the Sacramento and San Joaquin River Basins: Phase II: Methodology Development and Derivation of Chlorpyrifos Criteria” by Dr. Patti TenBrook and Dr. Ronald Tjeerdema.

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aquatic life in the Sacramento and San Joaquin River Basins.” This seems to so directly duplicate or overlap responsibilities within the existing regulatory structure that it raises a number of issues that have yet to be explored, including:

- The California Regional Board is taking on the formidable task of developing what appears to be a new national criteria derivation process. The process has not identified deficiencies in the methods used by USEPA and the California Department of Fish and Game. We believe the role of the Regional Board should instead focus on how available tools can best be applied or adjusted to take into account the site-specific or regional ecosystem characteristics found in the Central Valley.
- The Regional Board is considering methodology focused on pesticides which are well beyond past actions. Regulatory authority for pesticides under California law resides with DPR and we have not seen any documentation that demonstrates a need for the Regional or State Board to assume regulatory oversight of specific constituents such as pesticides within water systems. Other agencies like the Air Resources Board have successfully developed effective working relationships with DPR without developing duplicative and conflicting regulatory processes.
- There are significant policy and legal implications of such a shift in focus and scope. We question the regulatory authority of the Regional Board to develop regulatory standards for specific constituents, outside the established pesticide regulatory structure of California. Conflicting standards will open California agencies up to additional challenges, and add confusion and cost to growers who are trying to comply with potentially inconsistent regulations adopted by multiple agencies.

WPHA has engaged with this process since the Regional Board announced its intention of pursuing this proposed new direction in regulatory oversight. To the best of our understanding, at no time during this process has the need for a new methodology been documented. More importantly, the application of the proposed methodology by the Regional Board and its implications for existing pesticide registration and evaluation processes has not yet been deliberated. The likelihood of conflicting regulatory outcomes is significant given the multiple agencies involved. WPHA believes these issues must be thoroughly explored and reconciled among those involved agencies before any new process can be adopted. We are concerned that this evaluation is not happening and urge your attention to and engagement with this matter.

We ask that the Regional Board address the policy questions outlined in this letter, and determine the need for and expected benefits to the public expected to result from this new proposal. In the meantime, WPHA will continue to both work with the Regional Board staff in addressing both the technical questions related to the plan and the criteria methodology proposed. However, we will also engage with the Regional Board and other involved agencies, both federal and State, on the need for and appropriateness of this plan.

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Thank you for your consideration of our concerns, and we look forward to fully discussing our concerns with you.

Sincerely,



Renee Pinel  
President/CEO

Enclosure

CC via email: Mary Ann Warmerdam, DPR